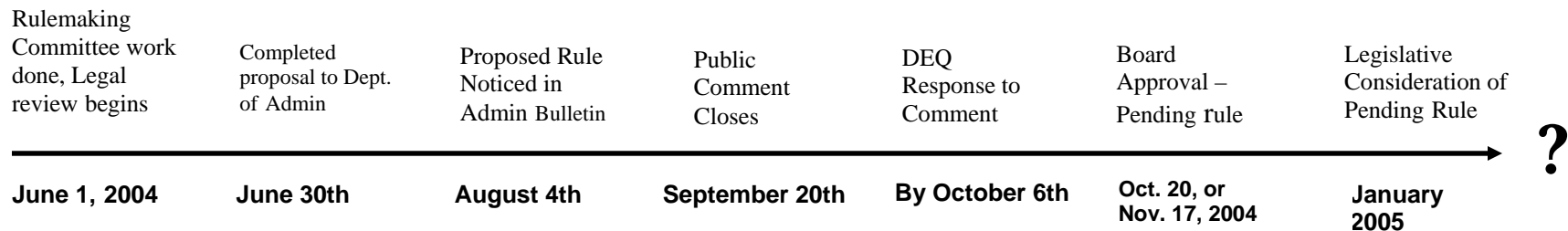


Example Timeline for Rulemaking – Update of Hg and other metal criteria

- Aim is to take what the negotiated rulemaking committee comes up with to the 2005 legislature as a pending rule
- DEQ Board must approve our proposed rule in order for it to become a pending rule.
- The Board meets six times per year and their last scheduled meeting in 2004 is on Nov. 17th, so that is the latest we can bring a proposed rule to them for their action. It is better to shoot for their Oct. 20th meeting, in case they ask questions.
- Before going to its Board, DEQ must take a proposed rule out for public comment, respond to public comment, and then prepare a rule package for the board.
- Public comment period must be a minimum of 30 days; 45 days may be advisable. With 45 days, DEQ is allowing itself only 17 days to summarize and respond to public comment, including making any changes in the guidance or rule language that may result.
- To initiate public comment a proposed rule must be noticed in Idaho's Administrative Bulletin, the bulletin is published on the first Wednesday of each month.
- So we must make the Wednesday Aug. 4, 2004 Administrative Bulletin with our proposed rule and implementation guidance.
- Publication in the Admin Bulletin requires ~4 weeks lead-time, deadline for Aug 4th bulletin is June 30, 2004.
- Before DEQ turns the draft rule language over to the Department of Admin four things must happen:
 - Completion and legal review of Proposed Administrative Rule Form, general description of rule and purpose
 - Director Approval of proposed rulemaking
 - Approval by Division of Financial Management / Governor's Office
 - Legal review of proposed rule docket, as it will be noticed (no changes after this, unless in response to public comment or made by the Board)



This rulemaking was initiated by a June 2003 petition from the Idaho Mining Association (IMA) to the Department of Environmental Quality's (DEQ's) DEQ Board, asking DEQ to adopt EPA's 2002 national criteria recommendations for mercury (EPA, 2002).

The DEQ board accepted the petition and DEQ agreed to begin negotiated rulemaking by fall of 2003.

In the September 3, 2003 issue of Idaho's monthly Administrative Bulletin, DEQ announced that the first meeting of Negotiated Rulemaking would take place October 24, 2003.

Thirteen negotiating meetings were held over the eight months from Oct. 24, 2003 through June 15, 2004. A proposed rule was noticed in the August 4, 2004 Administrative Bulletin as planned.

Assuming the rulemaking continues to go smoothly, a final rule will be adopted and become effective under state law at the end of the 2005 legislature. Thereafter DEQ will then need to pull together its submittal package and submit the rule to EPA for their approval.

Because the changes affect waters inhabited by species listed as threatened or endangered under the Endangered Species Act (ESA), EPA will prepare a Biological Evaluation of the rule change and initiate consultation with NOAA Fisheries and Fish and Wildlife Service (the services).

EPA may approve the rule prior to conclusion of consultation under section 7D of the ESA (no irretrievable commitment of resources), subject to later results of consultation and the potential reasonable and prudent measures the services may specify to avoid adverse effects to listed species.